

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|------------------------|---|--------------|
| KENNETH A. GREENE | : | CIVIL ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| DEBORAH SHARPE, ET AL. | : | |
| Defendants. | : | NO. 01-2153 |

M E M O R A N D U M

Newcomer, S.J. November , 2001

Defendants Motion for Summary Judgment is presently
before the Court.

I. BACKGROUND

Plaintiff Kenneth Greene, an African-American male, was imprisoned at the Philadelphia House of Corrections for failing to pay child support.¹ The defendants in this case are: 1) Deborah Sharpe, a House of Correction social worker; 2) Thomas Costello, Commissioner of the Philadelphia Prison System; 3) Thomas Shields, Warden of the House of Correction; and 4) the City of Philadelphia.

During his imprisonment, plaintiff contends that he filed a lawsuit in this Court and was required to produce information regarding transactions in his inmate trust account. Plaintiff alleges that defendant Deborah Sharpe, social worker,

¹On February 26, 2001, Judge Margaret T. McKeown of the Philadelphia Court of Common Pleas sentenced plaintiff to 120 days incarceration. The Court is not aware whether plaintiff is still imprisoned at this time.

refused to sign the certification form regarding plaintiff's account, denying him access to the courts. Plaintiff further alleges defendant Sharpe's refusal was in retaliation for a lawsuit he had filed against her co-worker and because of his race.

Additionally, plaintiff alleges that defendants City of Philadelphia, Thomas Costello, and Thomas Shields violated his rights under the Americans with Disabilities Act ("ADA"). Specifically, plaintiff alleges that he is legally blind, and that he cannot see the televisions in the housing unit which are suspended from the ceiling. He further alleges that he wrote a letter to Costello and Shields requesting that they provide him with a television from a storage area that contained unused televisions. According to plaintiff's Complaint, inmates were permitted to have televisions in their cells until recently. Plaintiff then claims that upon receipt of his request, defendants caused the storage area televisions to be removed within a few days, and failed to provide him with a television.

Accordingly, plaintiff advances four claims against defendants: 1) defendants' denial of plaintiff's access to the courts; 2) defendant Sharpe's violation of 42 U.S.C. § 1983; 3) defendant Sharpe's violation of 42 U.S.C. § 1985; and 4) defendants City, Costello, and Shields' violation of the ADA.

II. DISCUSSION

Defendants have filed a Motion for Summary Judgment, but plaintiff has failed to file a response. The Court now turns its attention to that Motion.

The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). When a party fails to file a response to a Motion for Summary Judgment, Federal Rule of Civil Procedure 56(c) governs the Motion. Loc. R. Civ. P. 7.1(c). Thus, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c).

A. Plaintiff's Claim That Defendants Denied Him Access to the Courts

To establish a violation of plaintiff's right to access the courts, plaintiff must demonstrate actual injury, such as loss or rejection of his legal claims. Lewis v. Casey, 518 U.S. 343, 347 (1996); Wilson v. Shannon, 982 F. Supp. 337, 339 (E.D.Pa. 1997). Here, on May 21, 2001, the Court ordered Deputy Commissioner John Murphy of the Philadelphia Prison System to provide the Court with a copy of plaintiff's inmate trust fund account for a six-month period. Therefore, plaintiff was not

denied access to the courts, nor were his legal claims lost or rejected as a result of the defendants' alleged conduct.

B. Plaintiff's § 1983 Claim Against Defendant Sharpe

Plaintiff also claims that defendant Sharpe's alleged refusal to sign his certification form was retaliation against him for exercising his First Amendment rights, a claim actionable under 42 U.S.C. § 1983. Allah v. Seiverling, 229 F.3d 220, 224-25 (3d Cir. 2000). To satisfy the elements of such a claim, plaintiff must prove that he engaged in a constitutionally protected activity, that he suffered adverse action at the hands of prison officials, and that there exists a link between the protected activity and the adverse action. Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001). Here, plaintiff's Complaint merely asserts that Sharpe retaliated against plaintiff's exercise of his constitutional rights, and a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992). Further, and as discussed above, plaintiff was not denied access to the courts, and plaintiff pursued his case despite Sharpe's alleged retaliatory conduct. Thus, plaintiff cannot demonstrate an injury to warrant his § 1983 claim. Suppan v. Dadonna, 203 F.3d 228, 235 (3d Cir. 2000) ("A tort to be actionable requires injury. It would trivialize the First Amendment to hold that harassment for

exercising the right of free speech was always actionable no matter how unlikely to deter a person of ordinary firmness from that exercise. . . .").

C. Plaintiff's § 1985 Claim Against Defendant Sharpe

Plaintiff's third claim arises under 42 U.S.C. § 1985. To state such a claim, plaintiff must allege 1) a conspiracy; 2) motivated by racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; 3) an act in furtherance of the conspiracy; and 4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. Griffin v. Breckenridge, 403 U.S. 88, 91 (1971). However, "mere conclusory allegations that a conspiracy existed" are insufficient. Boykin v. Bloomsburg University of Pennsylvania, 893 F. Supp. 409, 418 (M.D. Pa. 1995), aff'd, 91 F.3d 122 (3d Cir. 1996).

In the instant case plaintiff has failed to point to any evidence that a conspiracy actually existed. Additionally, because defendants did not deny plaintiff access to court, plaintiff cannot show that he suffered an injury to person or property or that he was deprived of any right or privilege.

D. Plaintiff's Claim That Defendants Violated the Americans With Disabilities Act

In his final claim, plaintiff alleges that defendants

City of Philadelphia, Thomas Costello, and Thomas Shields violated the ADA when they failed to respond to his written request that he be provided with a television in his cell block. Thus, plaintiff contends that these defendants "have discriminated against plaintiff on the basis of his disability."

The ADA states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Defendants argue that the provision of a television in plaintiff's cell is not a service, program, or activity within the meaning of the ADA. However, neither the ADA nor relevant regulations precisely define what constitutes a service, program, or activity.

In Owens v. Chester County, plaintiff, an inmate, alleged that because plaintiff was unable to walk or stand without auxiliary aids after having bypass surgery on his left leg, and because Chester County Prison denied him the use of his crutches or a wheelchair, he was unable to utilize many of the benefits that Chester County Prison provides to its inmates, including use of the phone, use of the general library, participating in the yard activities, eating daily meals, and retrieving his prescribed medications. 2000 WL 116069, *11

(E.D.Pa. Jan 31, 2000). There, Judge Buckwalter found that the Chester County Prison and "and all of its facilities (i.e., the phone, the library, the yard, and meals) constitute services and programs of Chester County to which the ADA applies." 2000 WL 116069, *11 (E.D.Pa. Jan 31, 2000).

Similarly, plaintiff has alleged that the Philadelphia House of Correction provides inmates with televisions in the cell block. As the House of Correction provides inmates with such televisions, that provision is a service and/or activity of the House of Correction. Therefore, assuming plaintiff is legally blind, that plaintiff cannot view the cell block televisions, and that plaintiff was denied the benefits of television, defendants are not entitled to judgment as a matter of law.²

Accordingly, the Court will grant summary judgment on counts one through three of plaintiff's Complaint, but not on count four. An appropriate Order will follow.

Clarence C. Newcomer, S.J.

²Defendants have not raised the issue of whether plaintiff requested a reasonable accommodation within the meaning of the ADA. However, if it is true that defendants had extra televisions in a nearby storage area, removed those televisions immediately after plaintiff's request, and until recently inmates were permitted to have televisions in their cells, then whether plaintiff requested a reasonable accommodation is a question of fact for the jury.